

May 16, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of ex parte presentations - Connect USVI Fund*
WC Docket No. 18-143

Dear Ms. Dortch:

On May 14, 2019, ATN International, Inc. (“ATN”), on behalf of itself and its subsidiary Virgin Islands Telephone Corp. dba Viya (“Viya”), met separately with Commissioner Brendan Carr and his Chief of Staff Jamie Susskind; Special Counsels to Chairman Ajit Pai, Michael Carowitz and Preston Wise; and Wireline Legal Advisor to Commissioner Michael O’Rielly, Arielle Roth, regarding the Connect USVI Fund Stage 2 fixed support assignment mechanism under consideration in the above-referenced docket.¹ In the meetings, ATN was represented by Michael T. Prior, President and Chief Executive Officer;² Douglas J. Minster, Vice President, Government and Regulatory Affairs; and outside counsel Phillip R. Marchesiello and the undersigned.

In the meetings, ATN urged the Commission, as it formulates plans to assign the Connect USVI Fund Stage 2 support for fixed networks, to bear in mind the specific and unique circumstances in the U.S. Virgin Islands (“USVI”). Although the NPRM contemplated treating the USVI and Puerto Rico as “greenfield” opportunities following the devastation caused by Hurricanes Irma and Maria,³ the facts on the ground in the USVI today are very different. Viya has restored voice and broadband service to pre-hurricane levels to over 95 percent of the locations in the USVI. As a result, the USVI is unlike the unserved areas where the Commission

¹ *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404 (2018) (“Order” or “NPRM,” as applicable).

² Mr. Prior’s travel schedule prevented him from attending the meeting with Ms. Roth.

³ See, e.g., NPRM, 33 FCC Rcd at 5414 ¶ 35.

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has used competitive processes to award universal service support in the past.⁴ Moreover, the award of support to another provider to serve any of the areas where Viya is capable of providing 25 Mbps down and 3 Mbps up (“25/3 Mbps”) service would result in the use of universal service funds to overbuild a universal service-supported broadband network, contrary to Commission policy. As a result, Viya reiterated that the Commission should award the fixed Connect USVI Fund support to Viya consistent with the statewide commitments offered to price cap incumbent local exchange carriers in 2014.⁵

If, despite these concerns, the Commission nevertheless uses a competitive process to award fixed Connect USVI Fund support, Viya urged the Commission to structure its allocation process to recognize the specific circumstances in the USVI. To avoid the problems of using a competitive approach in a served area, discussed above, the Commission should limit the use of such a process to the approximately five percent of locations in the USVI currently unserved by Viya. The Commission should maintain Viya’s current universal support level of approximately \$16.4 million annually, which has been critically important to the initial deployment and maintenance of the network, its reconstruction, and the offering of service at affordable rates. The Commission could then allocate the remainder of the Stage 2 fixed support funds for the USVI (approximately \$2.25 million) to the entity selected via the competitive process to buildout service in unserved areas. If, however, despite the problems identified above, the Commission wishes to use a competitive process in areas where Viya already is capable of providing 25/3 Mbps service, the Commission must require participants to bid to serve the entire USVI as a single service area. The economies of scale in the USVI are too limited for a provider to carve out a viable business serving only a portion of the USVI.⁶

In any event, it is important that the Commission structure any competitive process in such a way that it does not reduce the \$18.65 million of annual support proposed in the NPRM to be made available for fixed voice and broadband services in the USVI. The budget proposed for

⁴ See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5968 ¶ 51 (2016) (“*CAF Auction Order*”) (“only census blocks lacking 10/1 Mbps service from any provider will be eligible for bidding”); *Mobility Fund Phase I Auction Scheduled for September 27, 2012*, Public Notice, 27 FCC Rcd 530, 531 ¶ 2 (WTB 2012) (awarding “support to carriers that commit to provide 3G or better mobile voice and broadband services in *areas where such services are unavailable*”) (emphasis added); *Tribal Mobility Fund Auction Scheduled for October 23, 2013*, Public Notice, 28 FCC Rcd 2764, 2765 ¶ 2 (WTB 2013) (providing “one-time support to deploy mobile voice and broadband services to *unserved Tribal lands*”) (emphasis added).

⁵ Viya Comments at 18-24, citing *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17730-31 ¶ 175 (2011) (“*Transformation Order*”), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁶ The population of the USVI is only about 100,000 people spread over four islands over a thousand miles from the U.S. mainland.

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the fixed Connect USVI Fund is only slightly more than the universal service support that Viya historically received prior to the storms as the USVI's incumbent local exchange carrier. The substantial and unique costs of providing telecommunications services in a remote and insular area such as the Virgin Islands exceeded even that level of annual support: Viya's most recent rate case before the USVI Public Services Commission – which was conducted two years before the hurricanes and thus did not include the additional costs of reconstruction – concluded that, even with rate increases, Viya was left with a \$7 million annual shortfall below its revenue requirement. Viewing this proceeding as an ordinary reverse auction opportunity to reduce the amount of support available in the Territory would be punitive to the people and businesses of the USVI and antithetical to purpose of this proceeding to establish “a longer-term solution ... to rebuild, improve, and expand service in ... the U.S. Virgin Islands given the widespread devastation to communications networks caused by the hurricanes.”⁷

Finally, the Commission must ensure that the eligibility criteria and accountability requirements applicable to any competitive process adequately guard against the award of support to an entity that is ultimately unable to perform on its commitments. It is important that any competitive process has a pool of rational participants that are technically, financially and operationally qualified to ensure that the Commission's program advances the goals of the Connect USVI Fund and does not result in a reduction of service below what has been achieved with historical USF support. These eligibility criteria and accountability measures should be modeled on the CAF-II provisions and be at least as comprehensive and strictly applied.⁸

This filing is submitted consistent with the Commission's ex parte rules.

Sincerely,

/s/

L. Charles Keller

Counsel to ATN and Viya

cc: Hon. Brendan Carr
Michael Carowitz
Preston Wise
Arielle Roth
Jamie Susskind

⁷ NPRM, 33 FCC Rcd at 5412 ¶ 28.

⁸ See 47 C.F.R. § 54.315.